IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 14TH NOVEMBER 2006 / 23RD KARTHIKA 1928

Crl.MC.No. 939 of 2004(B)

CC.49/2004 of JUDL.MAGISTRATE OF FIRST CLASS-1, MANANTHAVADY

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PETITIONER: ACCUSED NOS.1 TO 5:

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1. KHALID, S/O. IBRAHIM,
   MUNDOLY HOUSE, KOTTATHARA (P.O), SALESMAN
   CITY STORE, IV/230, VELLAMUNDA GRAMA PANCHAYATH.

2. ALI ARAKA, S/O. IBRAYI,
   VELLAMUNDA, 8/4, KATTAYAD P.O., WAYANAD DISTRICT,
   PROPRIETOR, CITY STORE, IV/230, VELLAMUNDA GRAMA
   PANCHAYATH.

3. NOUSHAD, S/O. ABDUL KADAR,
   KELOTH HOUSE, MANANTHAVADY, PROPRIETOR,
   N.A.DISTRIBUTORS, 5/1484, MANANTHAVADY P.O.

4. R.ANAND,
   REGIONAL SALES MANAGER, FOODS-SOUTHERN REGION,
   M/S. HINDUSTAN LEVER LTD., HINDUSTAN LEVER HOUSE,
   BACKBAY RECLAMATION, MUMBAI-400020.

5. M/S. HINDUSTAN LEVER LIMITED,
   HINDUSTAN LEVER HOUSE, BACKBAY RECLAMATION,
   MUMBAI-400 020, REPRESENTED BY R.ANAND.

6. S.SURESH JEYASINGH, S/O. K.SOLOMON,
   NOMINEE AND CHIEF CHEMIST, M/S. SAHAYAMATHA SALT
   REFINERY LTD., KALLOORANI VILLAGE,
   SIPPIKULAM POST-627 903, TUTICORIN DISTRICT.

7. M/S. SAHAYAMATHA SALTH REFINERY LTD.,
   KALLOORANI VILLAGE, SIPPIKULAM POST-627 903,
   TUTICORIN DISTRICT, REPRESENTED BY
   S.SURESH JEYASINGH.

BY ADV. SRI.N.A.MURALEEDHARAN
SRI.M.T.SURESHKUMAR

RESPONDENTS: COMPLAINANT AND STATE:
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1. THE FOOD INSPECTOR,
   MOBILE VIGILANCE SQUAD, KOZHIKODE (REPRESENTED BY
   THE FOOD INSPECTOR, MANANTHAVADY CIRCLE).

2. THE STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD

ON 4-11-2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.
CRL.M.C.NO.939 OF 2004

DATED THIS THE 14TH DAY OF NOVEMBER 2006

ORDER

The petitioners are the accused in C.C.No.49/2004 in the court of the Judicial First Class Magistrate-I, Mananthavady with respect to the offence under Section 16(1-A)(i) read with Section 2(ia)(h), 7(1) and A-15-01 of Rule 5 Appendix B of the Prevention of Food Adulteration Act and the Rules. The accused are the seller, the distributors and the manufacturer of Knorr Annapurna iodized Salt. It is the case of the petitioner that the analytical report is totally and absolutely erroneous. The standard applied to detect the alleged adulterant is manifestly incorrect. It is pointed out that the detection of the alleged adulterant i.e. glass pieces is based on I.S.I.Handbook Part IV, which is meant exclusively for determining the adulterants in food grains. It is further contended that the sodium silicate pieces which could be added as per Rule 62 of the Prevention of food Adulteration Rules as anti caking agent was included in the commodity and the same has been taken as glass pieces. The manufacturer is entitled to include the anti caking agent.

It is further pointed out that it is possible that the sample was tested on the basis that it is iodized salt simpliciter instead of free flowing iodized salt. The sample was taken from the packet that contained the label free flow salt that is mentioned in the Public Analysit's report, i.e.Annexure-D. Counsel has relied on the Condensed Chemical Dictionary (Gessner G.Hawley) that sodium silicate is the same is water glass which is simplest form of glass. Hence it is submitted by the counsel that the content analysed was free flow salt but the Analyst has examined the sample as iodized salt and hence the mistake has occurred. It is further pointed out that the percentage detected is only .01 %. It is submitted that the Analyst has evidently taken sodium silicate which was added as an anticaking agent as pieces of glass which itself was of a minute percentage. The counsel has also pointed out that as per the Condensed Chemical Dictionary(Gessner G.Hawley)anticaking agent is described as an additive used primarily in certain finely divided food products that tend to be hygroscopic to prevent or inhibit agglomeration and thus maintain a free-flowing condition. Such substances as starch, calcium metasilicate, magnesium carbonate, silica, and

magnesium-stearate are used for this purpose in table salt, flours, sugar, coffee, whiteners and similar products. Counsel has produced copy of I.S.I.Handbook Part-IV of the same which as per the Analyst's report is the standard adopted. I find the above does not contain any test for salt as such or the test for detecting glass pieces. Part-IV is only with respect to food grains and food grain products.

2. In the circumstances and in view of the above contentions which I find cannot be assailed the test report of the Public Analyst on the basis of which the prosecution has been launched is evidently erroneous . An incorrect report of the Public Analyst cannot be the basis for a prosecution in a serious offence for which the statute prescribes mandatory imprisonment. Hence, I find that the proceedings are liable to be quashed.

Hence, the proceedings against the petitioner in C.C.No.49 of 2004 in the file of the Judicial First Class Magistrate-II, Mananthavady is herewith quashed. The Crl.M.C.is allowed.

ks. **K.R.UDAYABHANU, JUDGE**

ks.